

exempt interest, and dividends received) shall be obtained by subtracting the percentage obtained under paragraph (b) of this section from 100 percent. For example, if the policyholders' percentage (as determined under section 809(a)(1) and paragraph (b) of this section) is 72.38 percent, then the life insurance company's share is 27.62 percent (100 percent minus 72.38 percent). In such a case, if the amount of a particular item is \$200, then the life insurance company's share of such item included in determining gain or loss from operations is \$55.24 (\$200 multiplied by 27.62 percent) and the share of such item set aside for policyholders (which is excluded from gain or loss from operations) is \$144.76 (\$200 multiplied by 72.38 percent). For purposes of determining gain or loss from operations, the life insurance company's share of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received) shall be added to the sum of the items comprising gross amount (as described in section 809(c) and paragraph (a) of § 1.809-4).

(d) *Required interest defined.* (1) For purposes of part I, section 809(a)(2) defines the term *required interest* for any taxable year as the sum of the products obtained by multiplying (i) each rate of interest required, or assumed by the taxpayer, in calculating the reserves described in section 810(c), by (ii) the means of the amount of such reserves computed at that rate at the beginning and end of the taxable year. In the case of the reserves described in section 810(c)(1), such rate of interest shall be the same as that used by the taxpayer for purposes of paragraph (b) of § 1.801-5 (relating to the definition of reserves required by law) with respect to such reserves. In the case of the reserves described in section 810(c)(2) through (5), such rate of interest shall be the same as that actually paid, credited, or accrued by the taxpayer with respect to such reserves. Thus, the required interest for any taxable year includes the elements of interest paid (as defined in section 805(e)) with respect to the reserves described in section 810(c).

(2) For purposes of computing required interest under section 809(a)(2) and subparagraph (1) of this paragraph,

the amount of life insurance reserves taken into account shall be adjusted first as required by section 818(c) (relating to an election with respect to life insurance reserves computed on a preliminary term basis) and then as required by section 806(a) (relating to adjustments for certain changes in reserves and assets) before applying the rate of interest required, or assumed by the taxpayer, thereto. However, in the case of the adjustments required by section 810(d) as a result of a change in the basis of computing reserves, the adjustments to any of the reserves described in section 810(c) shall be taken into account in accordance with the rules prescribed in section 810(d) and § 1.810-3.

[T.D. 6535, 26 FR 525, Jan. 20, 1961, as amended by T.D. 6886, 31 FR 8687, June 23, 1966]

### § 1.809-3 Gain and loss from operations defined.

(a) *Gain from operations.* For purposes of part I, subchapter L, chapter 1 of the Code, section 809(b)(1) defines the term *gain from operations* as the excess of the sum of (1) the life insurance company's share of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received), (2) the items of gross amount taken into account under section 809(c) and paragraph (a) of § 1.809-4, and (3) for taxable years beginning after December 31, 1961, the amount (if any) by which the net long-term capital gain exceeds the net short-term capital loss, over the sum of the deductions provided by section 809(d) and § 1.809-5.

(b) *Loss from operations.* For purposes of part I, section 809(b)(2) defines the term *loss from operations* as the excess of the sum of the deductions provided by section 809(d) and § 1.809-5 over the sum of (1) the life insurance company's share of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received), (2) the items of gross amount taken into account under section 809(c) and paragraph (a) of § 1.809-4, and (3) for taxable years beginning after December 31, 1961, the amount (if any) by which the net long-term capital gain exceeds the net short-term capital loss.

(c) *Illustration of principles.* The provisions of section 809(b) (1) through (3) and paragraphs (a) and (b) of this section may be illustrated by the following example:

*Example.* For the taxable year 1958, T, a life insurance company, had investment yield of \$900,000, including \$150,000 of dividends received from domestic corporations subject to taxation under chapter 1 of the Code, \$10,000 of wholly tax-exempt interest, and \$78,000 of partially tax-exempt interest. T also had items of gross amount under section 809(c) in the amount of \$12,000,000 and deductions under section 809(d) of \$6,963,500 (exclusive of any deductions for wholly tax-exempt interest, partially tax-exempt interest, and dividends received). For such taxable year, the share of each and every item of investment yield set aside for policyholders was 80 percent and the company's share of each and every item of investment yield was 20 percent. Based upon these figures, T had a gain from operations of \$5,180,000 for the taxable year 1958, computed as follows:

	Col. 1	Col. 2 (80%×Col. 1) exclu- sion of pol- icyholder's share	Col. 3 (20%×Col. 1) compa- ny's share
Interest wholly tax-exempt .....	\$10,000	\$8,000	\$2,000
Interest partially tax-exempt .....	78,000	62,400	15,600
Dividends received ....	50,000	120,000	30,000
Other items of investment yield .....	662,000	529,600	132,400
Investment yield .....	900,000	720,000	180,000
Gross amount (sum of items under sec. 809(c)) .....			\$12,000,000
Total .....			12,180,000
Less:			
Deductions under sec. 809(d)(8):			
Company's share of interest wholly tax-exempt ..		\$2,000	
30/52 of company's share of interest partially tax-exempt (30/52 ×\$15,600) .....		9,000	
85% of company's share of dividends received (but not to exceed 85% of gain from operations as computed under sec. 809(d)(8)(B)) (85%×\$30,000) .....		25,500	
All other deductions under sec. 809(d) .....		6,963,500	
			7,000,000
Gain from operations .....			5,180,000

(d) *Exception.* (1) In accordance with section 809(b)(4), if it is established in any case to the satisfaction of the Commissioner, or by a determination of The Tax Court of the United States, or of any other court of competent jurisdiction, which has become final, that the application of the definition of gain from operations contained in section 809(b)(1) results in the imposition of tax on:

(i) Any interest which under section 103 is excluded from gross income,

(ii) Any amount of interest which under section 242 (as modified by section 804(a)(3)) is allowable as a deduction, or

(iii) Any amount of dividends received which under sections 243, 244, and 245 (as modified by section 809(d)(8)(B)) is allowable as a deduction,

adjustment shall be made to the extent necessary to prevent such imposition.

(2) For the date upon which a decision by the Tax Court becomes final, see section 7481. For the date upon which a judgment of any other court becomes final, see paragraph (c) of §1.1313(a)-1.

[T.D. 6535, 26 FR 526, Jan. 20, 1961, as amended by T.D. 6886, 31 FR 8687, June 28, 1966]

#### § 1.809-4 Gross amount.

(a) *Items taken into account.* For purposes of determining gain or loss from operations under section 809(b) (1) and (2), respectively, section 809(c) specifies three categories of items which shall be taken into account. Such items are in addition to the life insurance company's share of the investment yield (as determined under section 809(a)(1) and paragraph (c) of §1.809-2), and the amount (if any) by which the net long-term capital gain exceeds the net short-term capital loss (such capital gains item is included in determining gain or loss from operations only for taxable years beginning after December 31, 1961). The additional three categories of items taken into account are:

(1) *Premiums.* (i) The gross amount of all premiums and other consideration on insurance and annuity contracts (including contracts supplementary thereto); less return premiums and premiums and other consideration arising